



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 21-AR

November 22, 2021

Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to G.L. c. 159 §§ 12, 32 and 39, and G.L. c. 166 §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file an annual return for calendar year 2018.

FINAL ORDER

<u>Docket #</u>	<u>Carrier</u>	<u>Year of Delinquency</u>	<u>Massachusetts Secretary of the Commonwealth Status¹</u>
DTC-21-AR-1	American Payphone Services, Inc.	2018	Voluntary Dissolution 03/05/2020
DTC-21-AR-5	CPMC, Inc.	2018	Registered/active
DTC-21-AR-6	Encompass Communications, LLC	2018	Involuntary Dissolution 06/28/2019
DTC-21-AR-10	Lattice Incorporated	2018	Registered/active
DTC-21-AR-18	Transbeam, Inc.	2018	Registered/active
DTC-21-AR-19	Vitcom LLC	2018	Involuntary Dissolution 06/30/2021

I. INTRODUCTION

Each carrier that is the subject of this Order was a registered carrier with the Department during the year in question and was therefore required to file an annual return with the Department. *Delinquent annual returns for calendar year 2018, D.T.C. 21-AR, Order Opening Investigation* (June 3, 2021) (“*Order Opening Investigation*”) at 2. According to the Department’s records, each of the above-captioned telecommunications common carriers failed to file timely an annual return for calendar year 2018.

¹ Massachusetts Secretary of the Commonwealth (“SOC”) records, Federal Communications Commission (“FCC”) records, and Department of Telecommunications and Cable (“Department”) tariff and Statement of Business Operations records are contained in Appendix 1; and calculation of forfeitures are contained in Appendix 2. Carrier records in these appendices are in alphabetical order.

In this Order, the Department determines that American Payphone Services, Inc. (“American Payphone”); CPMC, Inc. (“CPMC”); and Lattice Incorporated (“Lattice”) have outstanding delinquent annual returns due to the Department and were doing business in the Commonwealth in 2018, the year for which the annual return was due. *See* G.L. c. 166, § 11. Accordingly, the Department cancels these three carriers’ registrations and intrastate tariffs on file with the Department to the extent they were not already canceled, assesses forfeitures against each of these three carriers, and will refer its findings to the Attorney General for enforcement. *See* G.L. c. 159, § 39; G.L. c. 166, § 12. These three carriers will no longer have legal authority to provide telecommunications services in the Commonwealth.

In addition, the Department determines that Encompass Communications, LLC (“Encompass”); Transbeam, Inc. (“Transbeam”); and Vitcom LLC (“Vitcom”) have outstanding delinquent annual returns due to the Department but were not doing business in the Commonwealth in 2018, the year for which the annual return was due. *See* G.L. c. 166, § 11. Accordingly, the Department cancels these carriers’ registrations and intrastate tariffs on file with the Department to the extent they have not already been canceled in previous orders.

II. PROCEDURAL HISTORY

On June 3, 2021, the Department opened investigations into the failure of certain named telecommunications carriers to file an annual return for calendar year 2018. *Order Opening Investigation*. The Department simultaneously issued a Notice of Investigation, providing notice of the opportunity for hearing. *Delinquent annual returns for calendar year 2018*, D.T.C. 21-AR, *Notice of Investigation & Opportunity for Hearing* (June 3, 2021) (“Notice”). The Department published notice of the opportunity for hearing in the *Boston Globe* on June 17, 2021 and the *Republican* on June 19, 2021. The Department received no comments and no requests for

hearing. In the *Order Opening Investigation* and *Notice*, the Department directed each of the named carriers to respond in writing:

1. Did the company file the annual return for the relevant calendar year? If so, provide a copy of the annual return and documentation of the filing. If not, explain why the company did not file the annual returns, and state whether the failure to file is reasonable. If the failure to file is stated as reasonable, explain why.
2. Did the company provide telecommunications services in Massachusetts during the relevant calendar year?

Order Opening Investigation at 5; *Notice* at 2. The Department dismissed the investigations of 14 carriers that responded to the *Notice* and cured their delinquencies. Memo. of Dismissal, D.T.C. 21-AR-4 (July 7, 2021); Memo. of Dismissal, D.T.C. 21-AR-11 (July 7, 2021); Memo. of Dismissal, D.T.C. 21-AR-8 (July 27, 2021); Memo. of Dismissal, D.T.C. 21-AR-3 (Aug. 20, 2021); Memo. of Dismissal, D.T.C. 21-AR-12 (Aug. 23, 2021); Memo. of Dismissal, D.T.C. 21-AR-20 (Sept. 13, 2021); Memo. of Dismissal, D.T.C. 21-AR-16 (Sept. 20, 2021); Memo. of Dismissal, D.T.C. 21-AR-7 (Sept. 22, 2021); Memo. of Dismissal, D.T.C. 21-AR-13 (Oct. 18, 2021); Memo. of Dismissal, D.T.C. 21-AR-15 (Oct. 18, 2021); Memo. of Dismissal, D.T.C. 21-AR-2 (Oct. 25, 2021); Memo. of Dismissal, D.T.C. 21-AR-14 (Oct. 25, 2021); Memo. of Dismissal, D.T.C. 21-AR-17 (Oct. 25, 2021); and Memo. of Dismissal, D.T.C. 21-AR-9 (Nov. 10, 2021). The remaining carriers subject to this investigation that have not filed an annual return for calendar year 2018 are as follows:

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DTC-21-AR-5	CPMC, Inc.	2018	Registered/active
DTC-21-AR-6	Encompass Communications, LLC	2018	Involuntary Dissolution 06/28/2019
DTC-21-AR-10	Lattice Incorporated	2018	Registered/active
DTC-21-AR-18	Transbeam, Inc.	2018	Registered/active
DTC-21-AR-19	Vitcom LLC	2018	Involuntary Dissolution 06/30/2021

III. ANALYSIS AND FINDINGS

Each of the six carriers subject to this Order failed to file an annual return for calendar year 2018. *See Order Opening Investigation* at 3. The Department determines that American Payphone, CPMC, and Lattice have outstanding delinquent returns due to the Department and were doing business in the year for which the delinquent returns were due. The Department therefore assesses forfeitures against each of these three carriers. *See* G.L. c. 166, § 12. The Department will refer its findings against these carriers to the Attorney General for enforcement. *See* G.L. c. 159, § 39. The Department also cancels the registration of each of these three carriers, as well as all applicable intrastate tariffs they have on file with the Department, to the extent the Department has not already taken these actions. Further, the Department determines that Encompass, Transbeam, and Vitcom were not doing business in the Commonwealth in the year for which the delinquent annual returns were due. Accordingly, the Department does not assess forfeitures against these carriers but does cancel their registrations and any intrastate tariffs they have on file, to the extent the Department has not already taken these actions. As of the date of this Order, the six carriers subject to this Order no longer have legal authority to provide telecommunications service in Massachusetts.

A carrier must register with the Department in order to provide telecommunications service in Massachusetts. *Regulatory treatment of telecomms. common carriers within the Commw. of Mass.*, D.P.U. 93-98, *Order* at 12 (May 11, 1994) (“*Common Carrier Regulatory Treatment Order*”). Carriers providing telecommunications service in the Commonwealth are required to file annual returns with the Department for each calendar year by March 31 of the following year. G.L. c. 159, § 32; G.L. c. 166, § 11. Specifically, each telecommunications common carrier “doing business in the [C]ommonwealth” has a duty to file an annual return for

the preceding calendar year by March 31, or at a later date fixed by the Department for “good cause shown.” G.L. c. 166, § 11; *see also Delinquent annual returns for calendar years 2016 and/or 2017*, D.T.C. 19-AR, *Final Order* at 9 (Nov. 4, 2020) (“*19-AR Final Order*”). Any carrier neglecting to file an annual return required by G.L. c. 166, § 11, shall forfeit to the Commonwealth \$5.00 per day for the first 15 days of delinquency, \$10.00 per day for the subsequent 15 days, and a sum not exceeding \$15.00 per day for each day of delinquency thereafter until the annual return is filed. G.L. c. 166, § 12. If the Department determines that a carrier “unreasonably refuses or neglects” to file an annual return, the carrier shall also forfeit up to \$500 for each offense as an additional penalty.² *Id.* The Department refers failures to comply with G.L. c. 166, § 11, to the Attorney General for enforcement. G.L. c. 159, § 39.

The Department thus must determine whether a carrier was doing business in the Commonwealth during the calendar year for which it failed to file an annual return with the Department. G.L. c. 166, § 11. If so, the carrier is subject to the above-mentioned forfeitures under G.L. c. 166, § 12. Although chapter 166 is silent as to what constitutes “doing business,” the Department relies on a definition derived from the Massachusetts Department of Revenue’s regulations. *See 19-AR Final Order* at 10; 830 C.M.R. § 63.39.1(3)(b) (defining “doing business” in the Commonwealth for taxation purposes). For purposes of G.L. c. 166, §§ 11 and 12, the Department defines “doing business” to include: the buying, selling, or procuring of services or property; the execution of contracts; the exercise or enforcement of contractual rights; the maintenance of a place of business; the employment of labor; and each and every other act, power, right, privilege, or immunity exercised or enjoyed in the Commonwealth as an incident to

² The filing fee for an annual return is \$5.00. Mass. Dep’t of Telecomms. & Cable, *General Information & Filing Instructions Annual Return and Revenue Statement IPP Revenue Statement*, <https://www.mass.gov/doc/instructions-for-filing-an-annual-return/download>.

or by virtue of the powers and privileges acquired through corporate form. *19-AR Final Order* at 10. This list is not exhaustive. *See id.* A carrier’s registration status and filing history with the SOC and its own admissions to and determinations by the FCC³ may also inform the Department as to whether the carrier is doing business in the Commonwealth. *Id.* at 11. Any one of the above criteria is generally sufficient for the Department to find that a carrier is doing business in the Commonwealth. *Id.* However, a registered carrier’s lack of reportable intrastate revenues and lack of provision of telecommunications service in Massachusetts are indications that the carrier may not have been doing business in the Commonwealth. *See id.*

As to what constitutes “good cause” to extend a carrier’s filing deadline under G.L. c. 159, § 32, and G.L. c. 166, § 11, the Department relies on its longstanding standard:

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

Id.; *N.E. Tel. & Tel. Co.*, D.P.U. 94-50, *Order* at 51 (May 12, 1995) (citing *Boston Edison Co.*, D.P.U. 90-335-A, *Order on Motion for Clarification and/or Reconsideration & on Request to Defer Filing of DSM Budgets* at 4 (July 14, 1992)). The Department has found good cause to extend an annual return filing deadline where, although delinquent, a carrier reports a negligible amount of revenue, or the statutory forfeitures, if applied, would far exceed the revenue reported on the carrier’s delinquent annual return. *19-AR Final Order* at 12. However, the Department

³ The FCC requires each telecommunications carrier to file an FCC Form 499-A, which includes a carrier’s revenue, annually by April 1, with limited exception. *See* FCC, 2017 Telecommunications Reporting Worksheet Instructions at 2-3 (“FCC Form 499-A Instructions”); 47 C.F.R. § 54.711. The FCC reports carrier registration information on its FCC Form 499 Filer database at <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited Nov. 8, 2021). The FCC Form 499 database only displays a filer’s most recent filing date, so it has only limited utility in ascertaining whether the filer was registered during a given year. However, the Department considers FCC activity that is close in time to the year in question as persuasive as to whether a company was doing business during that year.

will not extend a filing deadline absent good cause shown. *See Fall River Gas Co.*, D.P.U. 89-199-A, *Order on Att’y Gen.’s Motion for Reconsideration & Motion to Stay Appeal Period* at 7 (Dec. 27, 1989). In the absence of an extension of the filing deadline for a carrier doing business in Massachusetts during the relevant calendar year, the carrier is subject to the above-referenced statutory forfeitures if it does not timely file its annual return. *See* G.L. c. 166, §§ 11, 12.

Failure to file an annual return may also be grounds for cancellation of the carrier’s registration and intrastate tariff(s), which would bar the carrier from providing telecommunications services in the Commonwealth.⁴ *See Order Opening Investigation* at 3. Additionally, the Department may cancel the registration and “direct removal of public access line service from the payphones of any company” that fails to file its annual return. *Delinquent annual returns for calendar year 2000*, D.T.E. 02-13, *Order B* at 4 n.3 (Sept. 20, 2002).

The Department applies these rules to each of the six carriers in turn.

A. American Payphone (D.T.C. 21-AR-1); CPMC (D.T.C. 21-AR-5); Lattice (D.T.C. 21-AR-10)

The Department finds that for purposes of G.L. c. 166, §§ 11 and 12, American Payphone; CPMC; and Lattice were each doing business in the Commonwealth during 2018. The Department addresses each carrier in turn.

American Payphone voluntarily dissolved its SOC registration on March 5, 2020.

However, American Payphone was still active at the SOC in 2018 and filed an annual report with

⁴ The Department’s SBO and registration forms require a registrant to sign an affidavit affirming that the registrant understands that its failure to comply with “all applicable Massachusetts laws and rules, Department Orders, regulations, letter rulings, directives, and other requirements, whether formal or informal . . . will be grounds for the Department to cancel the [r]egistrant’s registration/SBO and tariff(s), thus preventing the [r]egistrant from operating or providing telecommunications services within Massachusetts.” Dep’t of Telecomms. & Cable, *Application for Registration for Telecommunications Service Providers Other than Payphone Service Providers – Statement of Business Operations (SBO)* 8, <https://www.mass.gov/doc/statement-of-business-operations-sbo/download> *see also* Dep’t of Telecomms. & Cable, *Pay Telephone Registration Form* 8, https://www.mass.gov/files/2017-07/payphoneregistrationform_0.pdf.

the SOC for its fiscal year that coincided with calendar year 2018. The company also filed an address change with the Department on March 15, 2018. According to the FCC, the company is no longer active, but again, only as of March 5, 2020. The FCC lists Massachusetts as a jurisdiction in which American Payphone provided telecommunications service while it was active. Based upon the company's 2018 activity at the SOC, the FCC, and the Department, the Department finds that American Payphone was doing business in the Commonwealth during 2018 for purposes of G.L. c. 166, §§ 11 and 12.

CPMC's SOC registration remains active. CPMC last filed an annual report with the SOC for its fiscal year ending December 31, 2017. According to the FCC, all assets of the company were sold to another party and the company is no longer active as of March 31, 2019. The FCC lists Massachusetts as one of the states in which CPMC was doing business prior to March 31, 2019. Based upon the company's active status in 2018 at the SOC and the FCC, the Department finds that CPMC was doing business in the Commonwealth during 2018 for purposes of G.L. c. 166, §§ 11 and 12.

Lattice's SOC registration remains active and on July 2, 2018, Lattice filed an annual report with the SOC for the fiscal year ending December 31, 2017. Lattice's registration with the FCC also remains active. Although the FCC does not list Massachusetts as one of the jurisdictions in which Lattice is currently providing telecommunications service, this is not determinative regarding its status in 2018, particularly given Lattice's active status in 2018 at the SOC and the Department. Based upon the foregoing, the Department finds that Lattice was doing business in the Commonwealth during 2018 for purposes of G.L. c. 166, §§ 11 and 12.

In sum, the Department finds that American Payphone; CPMC; and Lattice were each doing business in the Commonwealth in 2018. The companies were therefore required to file

annual returns for calendar year 2018 by March 31, 2019, but failed to do so.

No good cause exists to extend the filing deadlines associated with these delinquent annual returns. None of these carriers provided a reason for its failure to file the required annual return, or demonstrated the existence of good cause to extend the filing deadline. The Department notes that each of these carriers failed to respond to the *Notice* and failed to otherwise communicate with the Department. Consequently, the Department determines that no good cause exists to extend the carriers' filing deadlines. Each of the unfiled annual returns therefore remains delinquent. American Payphone; CPMC; and Lattice are each subject to per diem statutory forfeitures beginning on April 1, 2019, for their delinquent 2018 annual returns. Given the companies' lack of response and cooperation, the Department imposes the maximum \$15.00-per-day forfeiture allowable after the initial 30 days of delinquency. *See* G.L. c. 166, § 12; *19-AR Final Order* at Appendix 2 (imposing the maximum \$15.00-per-day forfeiture). The forfeitures continue to accrue for each of these companies.

The Department must also determine whether each carrier's failure to file the required annual return was unreasonable. *See* G.L. c. 166, § 12. As each carrier failed to provide a reason for its failure to file and failed to respond to the *Notice*, the Department finds that each carrier's failure to file was unreasonable. Given this lack of response and cooperation, the Department imposes the maximum additional \$500 forfeiture for each delinquent return. *See id.*; *19-AR Final Order* at Appendix 2 (imposing the maximum \$500-per-offense forfeiture). The Department will refer these findings to the Attorney General for enforcement pursuant to G.L. c. 159, § 39.

In addition, the Department finds the failures of American Payphone (registration already revoked and public access line service removed per D.T.C. 19-AR); CPMC; and Lattice to comply with the Department's requirements as reason to cancel their SBOs and intrastate tariffs

on file with the Department. *See Order Opening Investigation* at 4-5; *19-AR Final Order* at 18; *Common Carrier Regulatory Treatment Order* at 12. The companies failed to file an annual return for 2018 or otherwise communicate with the Department regarding their delinquency. Thus, to the extent not already done, the Department cancels the registrations and intrastate tariffs on file with the Department of American Payphone; CPMC; and Lattice as of the date of this Order.

B. Encompass (D.T.C. 21-AR-6); Transbeam (21-AR-18); Vitcom (21-AR-19)

The Department finds that for purposes of G.L. c. 166, §§ 11 and 12, Encompass; Transbeam; and Vitcom were not doing business in the Commonwealth during 2018. The Department addresses each carrier in turn.

Encompass's SOC registration was involuntarily dissolved on June 28, 2019, with a last date certain of January 31, 2017. Indeed, Encompass last filed an annual report with the SOC on January 25, 2017, for calendar year 2017. The annual report states that Encompass was no longer doing business in Massachusetts. Even though Encompass's FCC registration remains active, the Department finds that Encompass was no longer doing business in the Commonwealth during 2018 for purposes of G.L. c. 166, §§ 11 and 12.

Transbeam was dissolved by the SOC in 2008, but was reinstated in 2010 and remains active. However, Transbeam last filed an annual report with the SOC for its fiscal year ending December 31, 2017. Transbeam filed this report on September 28, 2017, prior to the relevant year in this case. Transbeam is no longer active with the FCC as of October 2, 2017, because all company assets were sold to another company.⁵ Based upon the foregoing, the Department finds

⁵ See Notice of Domestic Section 214 Authorizations Granted, 32 FCC Rcd. 7347 (Oct. 2, 2017).

that Transbeam was no longer doing business in the Commonwealth during 2018 for purposes of G.L. c. 166, §§ 11 and 12.

Vitcom was involuntarily dissolved with the SOC on June 30, 2021. Vitcom last filed an annual report with the SOC on November 16, 2017, for calendar year 2017. Vitcom's FCC account is no longer active as of March 31, 2020. The FCC reports that Vitcom's account was inactive for an extended period and closed because the administrator could not contact the company. In any event, the FCC did not list Massachusetts as a state in which Vitcom provided telecommunications service. Based upon the foregoing, the Department finds that Vitcom was no longer doing business in the Commonwealth during 2018 for purposes of G.L. c. 166, §§ 11 and 12.

To summarize, the Department finds that Encompass (registration already revoked per D.T.C. 19-AR); Transbeam; and Vitcom (registration already revoked per D.T.C. 19-AR) were not doing business in the Commonwealth during 2018. Therefore, the Department does not assess statutory forfeitures against these companies for their failure to submit annual returns for calendar year 2018. The Department does, however, cancel the registrations and intrastate tariffs on file with the Department of these companies as of the date of this Order, to the extent such registrations and tariffs were not already canceled.

IV. ORDER

After notice, opportunity for hearing and comment, and due consideration, it is

ORDERED that American Payphone; CPMC; and Lattice shall each immediately file an annual return for calendar year 2018, and pay to the Commonwealth of Massachusetts the applicable statutory forfeitures consistent with this Order; and it is

FURTHER ORDERED that the SBOs and intrastate tariffs on file with the Department of CPMC; Lattice; and Transbeam be canceled effective immediately; and it is

FURTHER ORDERED that public access line services be removed from the payphones of CPMC; and it is

FURTHER ORDERED that the findings of fact and directives herein involving the delinquent annual returns of American Payphone, D.T.C. 21-AR-1; CPMC, D.T.C. 21-AR-5; and Lattice, D.T.C. 21-AR-10 shall be presented to the Attorney General of the Commonwealth of Massachusetts for action pursuant to G.L. c. 159, § 39.

By Order of the Department,

A handwritten signature in blue ink, reading "Karen Charles Peterson", is written over a horizontal line.

Karen Charles Peterson,
Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5 and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court of the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may also be brought pursuant to 47 C.F.R. § 76.944.